

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	
)	8:07CR250
Plaintiff,)	
)	
vs.)	ORDER
)	
KIMBERLY MUNDELL,)	
)	
Defendant.)	

This matter is before the court on the Petition for Action on Conditions of Pretrial Release (Filing No. 23) and on the defendant's motion for a modification of her release (Filing No. 26).

On August 20, 2007, the defendant, Kimberly Mundell (Mundell), was ordered released upon conditions (Filing No. 22). Following her release from a State of Iowa correctional commitment, Mundell was to reside with a third-party custodian, Wayne Myler, in Council Bluffs, Iowa, attend substance abuse treatment, and comply with various other conditions of release. Prior to her release from the Women's Residential Correctional Facility, Mundell violated the rules of the facility (Filing No. 48). On August 28, 2007, U.S. Pretrial Services Officer Troy D. Greve alleged Mundell used alcohol and Mundell was unsuccessfully discharged from the Women's Residential Correctional Facility, in Council Bluffs, Iowa (Filing No. 23). A warrant for Mundell's arrest was issued and a detainer was placed with Iowa correctional authorities.

Mundell appeared before the undersigned magistrate judge on October 19, 2007. She was represented by Deborah D. Cunningham. There was a joint request to continue the hearing until October 31, 2007. On October 31, 2007, Mundell again appeared before the undersigned magistrate judge. She was represented by Deborah D. Cunningham and the United States was represented by Assistant U.S. Attorney Kimberly C. Bunjer. Following Mundell's plea of guilty to Count I of the Indictment, the court took up the Petition Action on Conditions of Pretrial Release. After being advised of the nature of the allegations, her rights, and the consequences if the allegation was found to be true, Mundell admitted the allegations. The court finds Mundell has violated the conditions of her release.

The court then considered the issue of disposition along with Mundell's motion for release (Filing No. 26). The court took judicial notice of the various Pretrial Services violation reports and heard the testimony of Wayne Myler, Mundell's proposed third party-custodian. After providing both parties an opportunity for allocution as to disposition and considering the reports of Pretrial Services, I find the Order Setting Conditions of Release should be revoked. Mundell was placed on parole in Iowa on October 7, 2004, after serving a term of incarceration for a felony controlled substance offense. During the term of this parole, she was ordered to complete an inpatient treatment program for testing positive for illicit chemicals. After completing the inpatient program she violated her terms of parole again by testing positive for illicit chemicals and by failing to attend appointments with her supervising officer. Mundell was then placed in the women's correctional facility in Council Bluffs. While residing in this facility and while involved in an outpatient substance abuse program, she violated the conditions of the correctional facility on June 23, 2007, for failing to answer her phone and for using alcohol while on a furlough. She was placed on a 30 day restriction. After being released on the court's conditions on August 20, 2007, Mundell again violated the rules of the women's correctional facility and the conditions established by this court by consuming alcohol on August 24, 2007.

Mundell has demonstrated she is unwilling to comply with the conditions of release and cooperate with Pretrial Services. Since the defendant cannot abide by simple conditions of release, I find Mundell is unlikely to abide by any conditions of release and there is no other condition or combination of conditions that would reasonably assure Mundell's presence for further proceedings or the safety of the community in the event she were released upon conditions.

IT IS ORDERED:

1. The Petition For Action on Conditions of Pretrial Release (Filing No. 23) is granted and Mundell's motion for release (Filing No. 26) is denied.
2. The August 20, 2007 Order setting conditions of release of Kimberly Mundell (Filing No. 22) is hereby revoked.

3. The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

DATED this 31st day of October, 2007.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge